



3510-16-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-T-2020-0043]

Sovereign Immunity Study

AGENCY: Patent and Trademark Office, Department of Commerce.

ACTION: Request for information.

SUMMARY: The United States Patent and Trademark Office (USPTO) published a notice in the Federal Register on November 5, 2020, requesting information on the extent to which patent or trademark rights holders are experiencing infringement by state entities without adequate remedies under state law, and the extent to which such infringements appear to be based on intentional or reckless conduct. With this new notice, the USPTO is supplementing the previous notice with additional questions.

DATES: *Comment date:* Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For reasons of government efficiency, comments must be submitted through the Federal eRulemaking Portal at www.regulations.gov. To submit comments via the portal, enter docket number PTO-T-2020-0043 on the homepage and click “search.” The site will provide a search results page listing all documents associated with this docket. Find a reference to this Request for Information and click on the “Comment Now!” icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in ADOBE® portable document format or MICROSOFT WORD® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal (www.regulations.gov) for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions regarding how to submit comments by mail or by hand delivery, based on the public's ability to obtain access to USPTO facilities at the time.

Submissions of Business Confidential Information: Any submissions containing business confidential information must be marked "confidential treatment requested" and submitted through www.regulations.gov. Submitters should provide an index listing the document(s) or information they would like the USPTO to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document. Submitters should provide a statement explaining their grounds for objecting to the disclosure of the information to the public as well. The USPTO also requests that submitters of business confidential information include a non-confidential version (either redacted or summarized) that will be available for public viewing and posted on www.regulations.gov. In the event that the submitter cannot provide a non-confidential version of its submission, the USPTO requests that the submitter post a notice in the docket stating that it has provided the USPTO with business confidential information. Should a submitter either fail to docket a non-confidential version of its submission or to post a notice that business confidential information has been provided, the USPTO will note the receipt of the submission on the docket with the submitter's organization or name (to the degree permitted by law) and the date of submission.

Anonymous submissions: The USPTO will accept anonymous submissions. Enter "N/A" in the required fields if you wish to remain anonymous.

FOR FURTHER INFORMATION CONTACT: Laura Hammel, by telephone at 571-272-9300.

SUPPLEMENTARY INFORMATION:

At the request of Senators Thom Tillis and Patrick Leahy, the USPTO is undertaking a study of the extent to which patent or trademark rights holders are experiencing infringement by state entities without adequate remedies under state law, and the extent to which such infringements appear to be based on intentional or reckless conduct.

On November 5, 2020, the USPTO published a notice in the Federal Register seeking public input on these matters. *See* 85 FR 70589 (Nov. 5, 2020). That notice set forth various questions relevant to the study. The USPTO appreciates the submissions received to date in response to that notice and will consider them in preparing the study. In addition, the USPTO now invites interested members of the public to respond to questions posed in that notice, and/or to the below questions. The public can also provide any other information it believes to be relevant.

1. If you are a patent or trademark right holder, has a state government or state entity ever used your patent or trademark without permission? If yes: (a) Did you pursue legal action for that use? Why or why not? (b) Were you able to seek relief under state law? (c) Did the availability of the defense of sovereign immunity deter you from litigating the matter in federal court?
2. As a state or state entity, do you believe that (a) your state or state entity has policies or practices that provide safeguards against the intentional or reckless infringement of

patents and trademarks, and (b) relevant state laws provide adequate remedies if infringement occurs?

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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